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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,357	02/23/2004	Su Jen Chou	14253 B	8971
36672 7590 10/30/2007 CHARLES E. BAXLEY, ESQ. 90 JOHN STREET THIRD FLOOR NEW YORK, NY 10038			EXAMINER ALI, SHUMAYA B	
			ART UNIT 3771	PAPER NUMBER
			MAIL DATE 10/30/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/785,357	Applicant(s) CHOU, SU JEN	
	Examiner Shumaya B. Ali	Art Unit 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 06 August 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Status of Claims***

In response to the office action mailed on 5/15/07 Applicant has amended claim 1 and cancelled claims 2-4. Currently claim 1 is pending in the instant application.

### ***Response to Arguments***

Applicant's arguments filed on 8/6/07 have been fully considered but they are not persuasive. Applicant on page 3, lines 24-26 and page 4, lines 1 and 2 argued, "Baughman failed to teach the camouflage fabric layer 40 provided and formed as a surfactant device to spoil surface tension of moist that are attached on to the camouflage fabric layer 40". This argument is not well taken because Baughman teaches a mask formed with three layers and fabric layer 40 can be placed such that the layer 40 is not in contact with the user's face. Thus fabric layer 40 serving as the outermost layer is considered a surfactant layer/device. With respect to "hair member", Examiner holds the position that some fabric can have fibers on the outer surface. Furthermore, old fabric or fabric that has been extensively washed would likely to have linters. Fibers/linters on layer 40 acts as a hair member.

On page 4, lines 3-9, Applicant argues, "camouflage fabric layer 40 is positioned against the wearer's face...may not be positioned against the wearer's face when the...layer 40 is a hair member, because the wearer may feel uncomfortable." This argument is not well taken because how the mask is positioned on a user is not supported by the claim. Furthermore, argument cited in lines 10-15, for example, "layer 40 is treated with anti-virus and/or anti-germ medical material...may not be positioned against the wearer's face because the wearer may be poisoned

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by the anti-virus...material” is not well taken because such argument implies that the mask is treated with anti-virus and/or anti-germ medical materials while in use, however, claim does not limit the mask to be positioned certain way and treated with anti-virus material while in use. Furthermore, mask washed using fabric detergent is considered treating the mask with anti-virus and/or anti-germ medical materials. Thus, mask washed using soap/detergent, which are known anti-virus and/or anti-germ material prior to wearing the mask would not poison the user. Furthermore, it would have been obvious to one of ordinary skill in the art to consider known fabric detergent to be safe or non-poisonous in order to prevent skin irritation.

Applicant on page 4, lines 19-27 argues, “Steinberg...mask failed to provide a hair member or a surfactant device to spoil surface tension of moist that are attached onto the mask...” this argument however is not well taken because primary reference to Baughman discloses hair member and secondary reference to Steinberg is used to teach that mask can be treated with anti-virus and/or anti-germ medical materials.

Combination teachings of Baughman and Steinberg render claimed invention obvious. Thus, rejection to claim 1 using Baughman in view of Steinberg is maintained and made final.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baughman et al. US 6,070,568 in view of Steinberg US 4,467,799.**

As to claim 1, Baughman discloses a mask (fig.1, 10) comprising: an outer layer (fig.2, 40). Baughman does not explicitly teach a hair member. However, layer 40 is a fabric layer, and some fabric inherently have outer fibrous layer that is considered claimed hair member. Furthermore, old fabric or extensively washed fabric can have linters. Linters/fibers on layer 40 is hair member. Since fabric layer 40 provided as a third layer and can be placed such that the layer is not in contact with the user's face, the fabric layer 40 is capable of being formed as a surfactant device to spoil surface tension of moist that are attached onto said hair members of said outer layer (col.3, lines 9-15), an intermediate layer (fig.2, 30) of active carbon materials attached onto said outer layer, for absorbing odors, nervous or poisonous gases, and for filtering viruses, or germs (see "middle activated carbon fiber fabric mesh layer" in col.2, lines 3,4, and 57-67), and an inner layer (fig.2, 20) of anti-moist cloth materials (see "highly permeable to air" in col.2, line 55) attached onto said active carbon intermediate layer and capable of engaging with users, and preventing said active carbon intermediate layer from contacting with the users, said inner layer and said active carbon intermediate layer and said outer covering layer being secured together with stitches (see col.3, lines 17-20) to form an integral structure, and to prevent said inner layer and said active carbon intermediate layer and said outer covering layer from being disengaged from each other (col.2, lines 6-8, and col.3, lines 15-18). Baughman however lacks said outer layer being treated with anti-virus and/or anti-germ medical materials to increase an anti-virus and an/or anti-germ effect of said outer layer. However, Steinberg

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teaches a transparent odor free facemask with bacteriocide coating (see col.1, lines 34-36).

Therefore, it would have been obvious to one of ordinary skill in the art to apply a bacteriocide coating to the outer layer of Baughman's mask for the purposes of killing bacteria as taught by Steinberg.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Klusewitz (3,142,549), Maryyanek (4,921,512), Kallenberg (2006/0159,883), Berrigan (5,641,555), Springell (2004/001,6345), Economy (3,769,144), and Hetz (5,035,006) pertain to absorbent fabric and filter mask.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shumaya B. Ali whose telephone number is 571-272-6088. The examiner can normally be reached on M-W-F 8:30am-5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

 10/28/07  
Shumaya B. Ali  
Examiner  
Art Unit 3771

  
JUSTINE R. YU  
SUPERVISORY PATENT EXAMINER  
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10/29/07